

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL
FILE

In the Matter of

Amendment of the Commission's
Rules to Establish New Personal
Communications Services

)
) GEN Docket No. 90-314
) ET Docket No. 92-100
)

RECEIVED

TO: The Commission

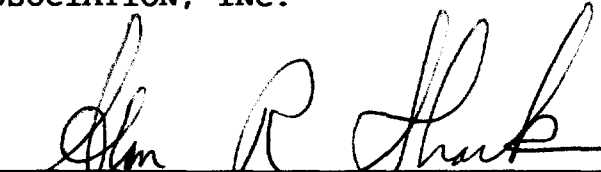
NOV - 9 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By: 
Alan R. Shark, President
1835 K Street N.W., Suite 203
Washington, D.C. 20006

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W., Suite 700
Washington, D.C. 20006
(202) 857-3500

November 9, 1992

046

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its comments on the FCC's Notice of Proposed Rule Making and Tentative Decision to establish a regulatory structure for personal communications services ("PCS").^{1/} To the extent that the instant proposal endeavors to establish a framework for the next stage in the evolution of the wireless communications industry, the FCC's task is formidable. Nonetheless, AMTA believes that it can be accomplished if the Commission is guided by its experience with demonstrably successful policies and participants in today's mobile communications industry.

I. INTRODUCTION

AMTA is a nationwide non-profit trade association dedicated to the interest of the private carrier mobile telecommunications industry. The Association's voting members operate primarily trunked Specialized Mobile Radio ("SMR") facilities throughout the nation, providing cost and spectrum efficient service to hundreds of thousands of customers. These members are already in the forefront of the wireless revolution. Their systems are already providing PCS, as the term is defined in the Notice. Thus, AMTA and its members have a direct and vital interest in the outcome of this proceeding.

^{1/} Notice of Proposed Rule Making and Tentative Decision, Gen Doc. No. 90-314, 7 FCC Rcd 5676 (August 14, 1992) ("Notice").

II. BACKGROUND

The instant Notice is the Commission's most formal acknowledgement to date that there is a wireless revolution underway in this nation and around the world. The demand for untethered communications appears virtually boundless. New applications emerge almost daily at the same time that the escalating demand for traditional services continues unabated. Thus, AMTA agrees with the FCC that, "The increasing availability of mobile communications over the past decade is freeing business and residential consumers from the physical constraints of a wholly wired telecommunications network." Notice ¶2.

Few entities are more familiar with these developments than AMTA's members. In many respects, trunked SMR operators are pioneers in the PCS arena. Some had entered the two-way radio business even earlier as providers of shared 450 MHz "community repeater" service. They and additional entrepreneurs then invested in significantly more expensive trunked technology as 800 MHz SMR licensees, an investment that enabled the FCC to accommodate explosive growth in the two-way, or wireless, radio industry without concomitantly generous spectrum allocations. Many also participate in the 900 MHz SMR marketplace. On a per kilohertz basis, there is no question that trunked SMR operators have achieved the highest ratio of users to channels of any two-way mobile service, while maintaining an admirable level of service quality.

Moreover, unlike their common carrier counterparts, SMR licensees have thrived in a regulatory environment characterized by intense competition. SMR frequencies may be acquired only upon a demonstration that already assigned channels are being adequately used. Similarly, any underutilized or unutilized frequencies may be recovered after specified periods of time and reassigned to other licensees.

This "use it or lose it" environment has favored qualified, committed competitors and ultimately has benefitted the user public. Customers in most markets may select from a variety of potential system operators. The result is true marketplace competition with minimal government involvement and maximum customer satisfaction.

AMTA believes that this highly successful SMR model should prove a useful guide for the PCS regulatory structure contemplated herein. The Association also urges the Commission to recognize that today's SMR operator is ideally positioned to bring PCS to reality if his participation is provided for in this proceeding.

III. RECOMMENDED REGULATORY STRUCTURE

A. PCS Should Be a Competitive Private Carrier Service Rather Than a Common Carrier or Hybrid Offering

More than two years ago, AMTA (then the American SMR Network Association, Inc.) urged the Commission to include provisions for a competitive, private carrier PCS regulatory

scheme. What was then a iconoclastic viewpoint is rapidly becoming an accepted precept. The Commission has correctly noted that since it intended PCS to be a highly competitive service, and thus it will not be providing a monopoly or duopoly service to captive customers, traditional common carrier regulation would be unnecessary, and indeed counter-productive. Notice §94.

To the extent that the public interest can be preserved without intensive government involvement, unregulation is the preferred choice. However, marketplace regulation works only when there is genuine competition. Although even a duopoly structure may theoretically accomplish that result, the better approach is to increase the number of service providers to the maximum possible, recognizing the need to award each sufficient capacity to provide the desired services.

The Association believes that the FCC's perceived maximum of five operators per market should be the minimum number authorized. Notice ¶34. The smaller allocation per licensee necessitated by this approach will, in AMTA's opinion, be compensated for by the spectrally efficient technologies likely to be employed. Moreover, the Association is confident that the advantages derived by the public from increased competition outweigh the benefits which might result from more generous frequency assignments.

If the Commission adopts a competitive licensing structure, AMTA sees no impediment to classifying mobile PCS as a private land mobile service in accordance with the Communications Act.

47 U.S.C. §153(gg), 332(c). Fixed PCS services, such as wireless PBXs or LANS, may not enjoy comparable status as the Act refers only to mobile services. Nonetheless, the agency has discretion to authorize the provision of fixed services on a private carrier basis, and should exercise that authority in this instance.^{2/}

AMTA urges the Commission to authorize PCS as a private carrier, rather than common carrier or hybrid service. Common carrier regulation will be unnecessary if the FCC is able to achieve its objective of creating a competitive PCS environment. A hybrid type service, wherein the regulatory status changes depending on the specific service offered or the operator's preference, is an even less attractive alternative. It would belie the FCC's characterization of PCS as a competitive offering. It would also produce unnecessary confusion among system operators, customers, competitors, state regulatory agencies and perhaps the FCC itself as those various parties attempt to sort out which services constitute common versus private carriage, and as they endeavor to isolate the financial and operational data specifically attributable to discrete offerings. The marketplace's efforts would be better employed in providing high quality, competitive, private carrier offerings. The resources of the FCC and state regulatory agencies would be better directed at regulating those essential service not yet subject to genuine competition.

^{2/} 47 C.F.R. §94.17.

B. Some Portion of the PCS Spectrum Should be Available for the Implementation of Advanced Technologies by Existing SMR Operators

In this proceeding, the Commission must once again weigh how best to ensure that desired services will be made available to the public rapidly in an optimal market environment. Sometimes the FCC has determined that these objectives will most likely be accomplished by promoting the entrance of new participants into a marketplace. In other instances, the agency has decided that existing operators have the greatest ability and incentive to introduce advanced technologies promptly.

For example, the spectrum required to provide high definition or advanced technology television is being made available uniquely to existing broadcast licensees.^{3/} It is today's television industry, rather than new entrants, which are being given the opportunity to implement the next stage of television technology. Similarly, each existing cellular licensee was awarded additional spectrum in its market, thereby creating the opportunity to develop additional services and to migrate to digital technology.^{4/} The FCC could have elected to assign that spectrum to a third market participant, but instead enabled the existing service providers to enhance their offerings.

^{3/} Second Report and Order/Further Notice of Proposed Rule Making, MM Doc. No. 87-268, 70 RR 2d 1102 (1992).

^{4/} Report and Order, Gen Doc. No. 84-1231, 61 RR 2d 165 (1986).

AMTA requests that today's SMR operators be given a comparable opportunity in the instant proceeding. As noted earlier, the SMR industry is already offering PCS, defined by the FCC as "A family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with a variety of competing networks." Notice ¶29. A number of operators are also participating in efforts to enhance spectrum efficiency and expand service offerings on existing SMR allocations by implementing digital and other advanced technologies.^{5/}

These efforts should be rewarded, and the laudable record of the industry in providing competitive cost and spectrum efficient PCS-type services recognized, by dedicating some portion of any PCS allocation for the implementation of even more advanced technologies by SMR licensees. Doing so would advance the Commission's objectives of promoting the rapid deployment of a diversity of PCS services in a competitive environment.

C. MSA/RSA Service Areas Should be Retained for PCS

The Commission has queried whether PCS service areas should be larger than the MSA/RSA delineations used to define cellular

^{5/} See, Fleet Call Order, 6 FCC Rcd 1533 (1991); recon. den., 6 FCC Rcd 6989 (1991); Application of Advanced Radio Communications Service of Florida, Inc.; Application of Mobile Radio New England; Applications and Associated Waiver Requests of Cencall, Inc.; Industrial Communications and Electronics, Inc., Transit Communications Atlanta, L.P., Advanced MobileComm Midwest G.P., Dispatch Communications of the Mid-Atlantic, Inc. and Dispatch Communications of Pennsylvania, Inc., U.S. Digital, Inc., Air Link Communications, Inc., Johnson Communications Corporation, and Fleet Call, Inc; American Mobile Data Communications, Inc., 4 FCC Rcd 3802 (1989).

market areas. Notice ¶56-59. The agency suggests that replicating that licensing scheme might retard the issuance of authorizations and result in otherwise avoidable transactional costs as licensees seek to consolidate service areas. Therefore, the FCC suggests several service area options ranging from 487 "Basic Trading Areas" to a possible nationwide PCS license, each of which is considered by the Commission to be superior to the MSA/RSA approach. Notice ¶60. While AMTA also wishes to avoid any unnecessary delays or costs associated with the issuance of PCS authorizations, it believes that retention of the MSA/RSA definition will facilitate the FCC's objectives and the promotion of a competitive PCS market structure.

In the Association's experience, the one certain method of retarding an FCC licensing process is to adopt a totally new licensing scheme. The MSA/RSA approach is not perfect, but has the distinct advantage of being well defined and commonly understood by mobile communications entities. The Rand McNally Trading Areas, by contrast, are unknown commodities in this context. Other than being larger than MSA/RSAs, there is no obvious feature which makes them superior to the cellular approach or which indicates that they more closely track likely PCS service areas. Their virtues and deficiencies would undoubtedly be reviewed and debated at length prior to adoption of those market definitions, virtually mandating a delay in the issuance of PCS licenses. Similarly, the 194 telephone LATAs were established for a purpose totally unrelated to mobile

communications and, indeed, have often been an impediment to coverage of natural mobile geographic areas. The only obvious beneficiaries of that approach would be the telephone companies whose business structures already parallel those areas. Finally, the issuance of nationwide licenses would eliminate any possibility that small entities, which have traditionally brought innovation and flexibility to the wireless communications industry, will enjoy any opportunity to participate in the PCS marketplace. That result is antithetical to the balancing and optimization of the four values declared to be critical by the FCC in establishing a PCS regulatory structure. Notice, ¶6.

The PCS concept is broad, inclusive, and still less than fully defined. It is not possible to know today whether Trading Areas are too large or MSA/RSAs too small to provide optimal service areas. In that respect, only the establishment of monolithic nationwide licenses would permit the avoidance of transactional costs associated with securing authority to service the necessary geographic area. For these reason, AMTA recommends that the FCC apply its MSA/RSA licensing scheme to the PCS regulatory structure as a reasonable and well-defined basis for issuing authorizations.

IV. CONCLUSION

The instant Notice provides a viable foundation on which the FCC and the wireless communications industry can begin to construct a PCS regulatory structure which properly balances the

values sought by the Commission. AMTA believes that existing SMR operators can and will play a vital role in translating PCS from a concept to reality if permitted to do so in accordance with the recommendations contained herein.

CERTIFICATE OF SERVICE

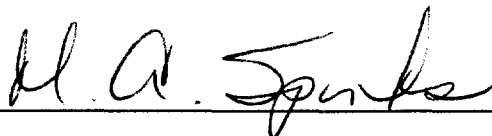
I, M.A. Spinks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 9th day of November, 1992, caused to have hand delivered a copy of the foregoing **COMMENTS** to the following:

Ralph Haller, Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Richard J. Shiben, Chief
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street N.W., Room 5202
Washington, D.C. 20554

F. Ronald Netro, Chief
Rules Branch
Land Mobile and Microwave Division
Private Radio Burea
Federal Communications Commission
2025 M Street N.W., Room 5126
Washington, D.C. 20554

Dr. Thomas P. Stanley
Chief Engineer
Office of Engineering and Technology
Federal Communications Commission
2025 M Street N.W., Room 7002
Washington, D.C. 20554

A handwritten signature in cursive script, reading "M.A. Spinks", is written over a horizontal line.

M.A. Spinks